



TOWN OF AUBURN

Received
8/12/13

August 12, 2013

U.S. Environmental Protection Agency
5 Post Office Square – Suite 100
Mail Code-OEP06-1
Boston, MA 02109-3912
ATTN: Newton Tedder

RE: Comments to the 2013 Draft MS4 NPDES Permit

Dear Mr. Tedder:

On behalf of the Town of Auburn, please accept the following comments on the proposed 2013 Draft MS4 NPDES Permit issued on February 12, 2013.

The Town sincerely appreciates the granting of two extensions to allow affected Granite State communities an opportunity to appropriately review the proposed language contained in the draft permit and consider the ramifications of the permit change. We also want to formally acknowledge the staff at both the U.S. Environmental Protection Agency (USEPA) and the NH Department of Environmental Services (NHDES) for the time they have spent with the MS4 communities to better understand the permit requirements.

The Town of Auburn is also part of a MS4 Coalition of communities. Further comments, in addition to this letter, will be submitted on behalf of the Town of Auburn by Sheehan, Phinney, Bass & Green, PA.

In regards to general comments the Town offers the following:

Section 1.9.2 dealing with Historic Properties is unchanged from the 2003 permit; however, what has changed is the mapping and reporting requirements. The 2003 permit focused on outfalls, while with the new permit we will be documenting all drainage structures within our MS4 system. This potentially opens the Town up to onerous Section 106 reviews for each and every catch basin, detention pond and drainage swale that we need to work on.

Section 2.1.1.c establishes the requirement to remedy any conditions causing an exceedance of water quality standards within 60 days of a determination that our discharge is causing an exceedance. The section specifically spells out that the compliance clock begins to accrue immediately and continues until the source is remedied. There is no grace period. This, coupled with the fact that we have to conduct dry weather sampling of all of our outfalls at the same time, could put the Town into almost immediate non-compliance. The Town is asking for time to evaluate the water quality data NHDES has used to determine the 303 (d) list. Our initial suggestion is that within the first three years of the permit, we could prioritize our outfalls based on the use of the receiving water value (as determined by NHDES) and risk to the public. We can then implement a sampling program of the high value/high priority water bodies in Auburn that may not already be taking place by the Manchester Water Works and develop plans to remedy any sources of contaminants specifically from our MS4.

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Section 2.1.2 prohibits any new or increased discharges (including pollutant loadings). It is not clear to us whether this means the Town needs to notify NHDES every time we issue a driveway permit or add a catch basin to our drainage system? Do we also have to provide a waste load analysis for every driveway? This provision seems administratively burdensome to our small community, and we doubt NHDES has the resources to respond to such a requirement.

The reductions to meet the TMDL in Table F-1 are based on the highest measured sample ever taken in a water body and are not indicative of the overall water quality of the receiving water or the average levels expected from the MS4 discharges.

Section 2.2.2 establishes an iterative approach to addressing non-compliant discharges over the course of the five year permit. That timeframe is not practical given the far reaching extent of the water quality issues in southern New Hampshire. The legal standard of maximum extent possible, which was in the first permit, did not require immediate compliance with water quality standards. This permit deviates from that approach leading to the concern most communities have about immediate non-compliance issues. We anticipate it will take time to prioritize, plan, permit, fund and construct many of the structural BMP's that will be required. We suggest allowing the Town to work with NHDES during the first three years of the permit to prioritize our receiving waters and develop a plan to concentrate on the high value waters first.

Many of the water quality issues identified for communities in our region are based on very limited data such as samples taken within months of the 2006 flood. Before plans are developed for these areas, communities need to conduct more extensive sampling and study focused on these areas.

Section 2.2.2.a.ii.b.3 states that all planned BMP's shall be fully implemented within three years of the permit effective date. This is not feasible given that almost all of Auburn's outfalls discharge ultimately to impaired waterways and we would have to deal with all of them at once. The Town requests the ability to prioritize our outfalls to concentrate on the highest priority outfalls (i.e.-- discharges near Lake Massabesic) first.

In total, this permit represents an increase in administrative and technical effort that likely will be difficult to impossible for any municipality to absorb, but particularly a small community such as Auburn. It is not necessarily the permit conditions themselves but rather the sheer volume of the impaired water bodies. According to EPA's website; New Hampshire ranks seventh in the nation in the number of impaired water bodies. New Hampshire also ranks second in the nation in the number of TMDL's with over 6,000. The state response to this is that most of those TMDL's (approx. 5,000) are for mercury, however, even if the mercury TMDL is taken off the list it still leaves 882 TMDL's which would still have New Hampshire in the top 15 states by number of TMDL's. Most of Auburn's outfalls discharge to impaired water bodies. The town cannot afford to tackle all of the outfalls simultaneously and meet the five year deadline spelled out in this draft permit.

The Town is in the process of having its Town Attorney review the representation that RSA 31:39 gives towns and cities the necessary authority to regulate chloride use on private properties with approved site plans. The Town respectfully disagrees with that assertion and feels adequate time needs to be built into the schedule to allow the New Hampshire Legislature to grant the necessary authority to affected communities if that is appropriate. New Hampshire is not a "home rule" state, as a result,

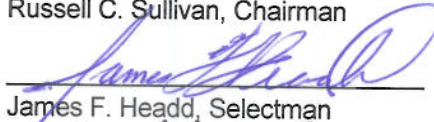
municipalities many only do what the Legislature has expressly authorized by state statutes. The Town also believes town by town compliance with chloride use will be disastrous to New Hampshire's business community, and perhaps would be accomplished much more effectively and efficiently at the state level.

Finally, **Section 2.3.7.d.iii** requires sweeping of uncurbed streets. This is not practical as the efficiency of a mechanical sweeper is greatly reduced in the absence of curbing. Of Auburn's approximately 80 miles of roads in town, approximately 15.5 miles is owned and maintained by the State of New Hampshire, and are not swept. Of the remaining 65 miles, approximately eight miles of road are Class VI roads. They are legally owned, but not maintained by the Town of Auburn and generally are gravel roads without curb and gutter. Of the remaining 56 miles of Town-owned roads, less than five miles has curb and gutter. And none of these account for private roads in developments that the Town has no legal responsibility or authority. At the present time, the Town of Auburn does not sweep any of its Town-owned and maintained roads. Estimates received approximately 18 months ago to sweep all of the Town's 56 miles of road once per year was approximately \$40,000. We are doubtful we would be able to secure funds for that purpose through the annual municipal budgeting process which requires voter approval.

Sincerely,



Russell C. Sullivan, Chairman



James F. Headd, Selectman



Paul M. Raiche, Selectman

AUBURN BOARD OF SELECTMEN

Cc: Vicki Quiram, Assistant Commissioner, NHDES
Jeff Andrews, NHDES